

REMARKS

The Office Action of November 8, 2004, has been carefully reviewed, and in view of the above amendments and the following remarks, reconsideration and allowance of the pending claims are respectfully requested.

In the above Office Action, claims 1-7 and 10-12 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Keefe* (U.S. Patent No. 4,223,637); claims 1-7 and 9-12 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Hegedus et al.* (European Patent EP 0104766); and claims 8 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Keefe* ('637).

As set forth above, claim 1 has been amended to recite a perch assembly for removable attachment to a bird feeder. The claimed assembly comprises a locating member for locating and removably engaging a body of the bird feeder, a perch, and pivoting means for allowing the perch to pivot relative to the locating member. Thus, in use the locating member may engage the bird feeder body and when so engaged said perch may pivot, from a retracted position in which said perch is substantially flush with the bird feeder body, to an extended position in which said perch projects outwardly from the bird feeder body such that a bird may rest upon said perch. For at least the following reasons, Applicant respectfully contends that these limitations are not met by the prior art.

The primary reference upon which the Examiner relies, *Keefe*, discloses a bird feeder having four separate pivoting perches 28 each having a mounting end 30 pivotly mounted on a pin 32, fixed to a mounting block 34 which is secured to the feeder sidewall 13. Thus, in contrast to the claimed invention, the fixed mounting block 34 does not removably engage a body of the bird feeder. Likewise, when not

in use the mounting block cannot be disengaged to allow the "perch assembly" to be detached. In the present invention, a user may advantageously select an appropriately shaped perch.

With respect to pending claim 7, a perch comprises at least two elongate members that extend in mutually orthogonal directions. In contrast, the perch of *Keefe* is defined by a single elongate rod 29. Thus, *Keefe* does not disclose a perch (singular) with two elongate members that extend in mutually orthogonal directions.

With respect to pending claim 11, the locating member of the present invention is also a bird feeding port. As explained in the specification, the locating member of the present invention is preferably a bird feeder port which, when located in an aperture of the bird feeder body, allows access to the bird feed therein. *Keefe* does not disclose the use of a port as a locating member, but rather, the port 26 functions as a feeding aperture, when in use, and it retains the perch in the closed position by way of plug 36 being inserted into aperture 26, when not in use. Hence, the feeding port 26 of *Keefe* is not a locating member as recited in the present claims.

Similarly, *Hegedus*, upon which the Examiner also relies, teaches a birdfeeder with two pivoting perches 122 that are again pivotally mounted directly to a main feeder body. Hence there is no "locating member," and in contrast to the claimed invention, no portion of the perch removably engages the body of the bird feeder.

With regards to claims 7 and 9, it appears that the perch 37 of *Hegedus* is a generally rectangularly shaped tray and as such does not comprise two elongate members that extend in mutually orthogonal directions and is not U-shaped. Providing U-shaped or ring-shaped perches, as recited in the claims, has been found

to encourage use by birds and thus provides a technical advantage to the present invention.

Finally, with regard to claim 11, the alleged "locating member" of *Hegedus* is an external underside portion of the main body that does not function as a feeding port, as recited in the claim.

CONCLUSION

Accordingly, in view of the above amendments and remarks, Applicant respectfully submits that the claims of the present application are now in condition for allowance, and an early indication of the same is earnestly solicited.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference would be helpful in resolving any remaining issues pertaining to this application; the Examiner is kindly invited to call the undersigned counsel for Applicant regarding the same.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: April 8, 2005

By: Karin Brayton McLoth (R. 53,297)
for - Wendi Leigh Weinstein
Registration No. 34,456

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620